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Battle Resumes Over War Study

The New York Times and the Washington Post returned to the courts today to defend their right to publish more material from a secret Pentagon study of the Vietnam war.

Federal appeals courts in New York and in Washington kept the two newspapers under temporary restraining orders over the weekend, blocking them from resuming publication of new material from the classified documents.

In each case, a federal district court judge had ruled that the government failed to prove its contention that further publication would result in irreparable injury to national security.

Hearing Before Gesell

In Washington, the Post faced District Court Judge Gerhard A. Gesell for the second time. Gesell refused to grant a temporary restraining order Friday but the Court of Appeals, in a 2-1 decision, reversed his action.

The Appeals Court granted the temporary restraining order and directed Gesell to hear the government's evidence and give his decision by 5 p.m. today.

As the hearing began at 8 p.m., Gesell announced that part of it would be held behind closed doors and part in open court. Gesell normally refrains from any closed hearings, but made the decision in this case—as Judge Murray I. Gurfein had in New York—because of the sensitivity of the issue. He said he would take no testimony past 4 p.m.

Gesell said he had met with attorneys for the government and the Post twice over the weekend, once Saturday morning and once last evening.

The Post, "under protest," provided the government last evening with the list of materials in its possession, he said.

Although it is not known exactly how much or what portions of the 47-volume Pentagon study, either of the papers has, Gesell remarked, "It does not yet appear that the Post has all the same documents that the Times has."

It is generally understood that the Times has a full copy of the study, and the Post is believed to have a summary version.

Congressmen's Motion

Gesell also denied a motion by a group of congressmen to intervene in the case on the side of the Post, but allowed them to file a "friend of the court" brief "with special status."

He also said he hoped the congressmen would be given the right to "full oral argument" during the appeal that inevitably would follow his decision.

In New York, meantime, a three-judge Court of Appeals was scheduled to hear arguments on the government's appeal of Gurfein's decision in favor of the Times.

The Times was under a restraining order, imposed Saturday by Court of Appeals Judge Irving R. Kaufman, which was scheduled to run out at noon. Unless the three-judge panel extended the order pending its decision, the Times would be free to resume its publication of the reports after noontime.

Independent Board Urged

In the meantime, controversy over publication of the secret materials continued.

Sen. Edmund S. Muskie, D-Maine, said he will introduce legislation to set up an independent board that would have authority to lift secrecy labels on government documents, and thus avoid such legal disputes.

The key figure in the disclosures by the Times, former President Lyndon B. Johnson, was reported by Time magazine to believe that the Pentagon documents do not accurately reflect his role, because "they are mostly contingency plans."

White House press secretary Ronald L. Ziegler said President Nixon concurs in the Justice Department's opinion that national security would suffer if further material is published. The government can't conduct foreign affairs "unless it can deal with foreign powers in a confidential way," Ziegler said.

Before publication was suspended by the court order, the government had published installments of its series based on the study.